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Reply to:  
Consumer Advocate and Protection Division  
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December 12, 2003

Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

IN RE: BELLSOUTH TELECOMMUNICATIONS, INC.'S TARIFF TO INCREASE  
CERTAIN RESIDENCE AND BUSINESS LOCAL EXCHANGE RATES — TARIFF  
NO. 20031339; DOCKET NO. 03-00619.

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Memorandum In Support Of Consumer Advocate and Protection Division's Complaint And Petition To Intervene in regards to Docket No. 03-00619. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615)532-2590. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Joe Shirley".  
JOE SHIRLEY

Assistant Attorney General

cc: All Parties of Record

#66649

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH</b>	)	
<b>TELECOMMUNICATIONS, INC.'S</b>	)	<b>DOCKET NO. 03-00619</b>
<b>TARIFF TO INCREASE CERTAIN</b>	)	
<b>RESIDENCE AND BUSINESS LOCAL</b>	)	<b>TARIFF NO. 2003-1339</b>
<b>EXCHANGE RATES</b>	)	

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**MEMORANDUM IN SUPPORT OF CONSUMER ADVOCATE AND PROTECTION  
DIVISION'S COMPLAINT AND PETITION TO INTERVENE**

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Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A), and hereby submits its *Memorandum in Support of Consumer Advocate and Protection Division's Complaint and Petition to Intervene*.

**I. INTRODUCTION**

On December 2, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed the above-captioned tariff seeking to increase the rates for residential and business basic local exchange telephone service. On December 8, 2003, the Consumer Advocate filed its *Complaint and Petition to Intervene*, alleging that BellSouth's tariff proposes increases in basic local exchange telephone service in violation of state law. The Consumer Advocate submits that, for the reasons set forth hereinafter and in its *Complaint and Petition to Intervene*, the Tennessee Regulatory Authority ("TRA") should not approve BellSouth's tariff and should convene a contested case proceeding and grant the Consumer Advocate's petition.

## II. ARGUMENT

### A. **Any Change or Adjustment in the Telephone Rates of a Price-Regulated Company Must Comply with the Provisions of Tenn. Code Ann. § 65-5-209 and the Company's Price Regulation Plan.**

In 1995, the General Assembly passed Public Chapter 408, the Telecommunication Reform Act of 1995, which is now codified in Title 65. “The passage of chapter 408 has truly reformed the provision and the regulation of local telecommunications services . . . . Instead of the traditional rate of return method, incumbents . . . may elect to have their rates regulated through a price regulation plan.” *AT&T Comm., Inc. v. Greer*, 1996 WL 697945 at \*3 (Tenn. Ct. App. 1996) (citing Tenn. Code Ann. §§ 65-5-208 and 65-5-209) (*emphasis added*).

The procedures for regulation of rates through a price regulation plan are clearly set out in Tenn. Code Ann. § 65-5-209. The General Assembly intended that these section 209 procedures be utilized to establish affordable rates for customers of price-regulated companies. *See BellSouth Telecomm., Inc. v. Greer*, 972 S.W.2d 663, 674-675 (Tenn. Ct. App. 1997) (“Since Tenn. Code Ann. § 65-5-209(a) directs the [TRA] to set an incumbent local telephone company’s initial rates ‘using the procedures established in this section,’ the statute is the sole source of the [TRA’s] authority to adopt a price regulation plan.”) The procedures for setting the initial rates for an incumbent company that applies for a price regulation plan are detailed in Tenn. Code Ann. § 65-5-209(c).

After affordable, initial rates are established pursuant to Tenn. Code Ann. § 65-5-209(c), the company’s “price regulation plan shall maintain affordable basic and non-basic rates”. Tenn. Code Ann. § 65-5-209(e) (Supp. 2003). Accordingly, upon approval of its price regulation application, the incumbent company “shall charge and collect only such rates that are less than or equal to the maximum permitted by this section”. Tenn. Code Ann. § 65-5-209(b) (Supp. 2003) (*emphasis*

added). The maximum rates that shall be charged and collected by price-regulated carriers are determined by Tenn. Code Ann. §§ 65-5-209(e), 65-5-209(f), and 65-5-209(g).

Therefore, “[o]nce a company enters price regulation under the statutory scheme, T.C.A. § 65-5-209(e)-(g) govern the amount by which the company is permitted to change its rates . . . . Subsequent to the TRA’s approval [of a price regulation plan], any increase in [a company’s] rates would have to follow” these provisions. *Consumer Advocate Div. v. Tennessee Regulatory Auth.*, 2000 WL 1514324 at \* 1-2 (2000) (*emphasis added*). Stated another way, “[a]fter the initial qualification for a price regulation plan, a provider’s ability to increase rates for services is subject to limitations established by statute.” *United Telephone-Southeast, Inc. v. Tennessee Regulatory Auth.*, 2001 WL 266051 at \*1 (Tenn. Ct. App. 2001) (*citing* Tenn. Code Ann. § 65-5-209).

Tenn. Code Ann. § 65-5-209(e) specifically provides that an incumbent company may change its rates for basic or non-basic telephone services “only so long as its aggregate revenues for basic local exchange telephone services or non-basic services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan.” Tenn. Code Ann. § 65-5-209(e) (Supp. 2003). This section further provides that such rate changes are limited by an overall maximum annual adjustment which is determined by reference to a formula incorporating the national inflation rate. *See* Tenn. Code Ann. § 65-5-209(e) (Supp. 2003); *see also* *Consumer Advocate Div.*, 2000 WL 1514324 at \*1. Similarly, subsection (g) places an overall cap on the rates that a price-regulated carrier shall charge and collect for interconnection services. *See* Tenn. Code Ann. § 65-5-209(g) (Supp. 2003).

Moreover, the General Assembly sought to further protect the interests of residential consumers by ensuring the maintenance of affordable rates for residential services under price

regulation. In particular, Tenn. Code Ann. § 65-5-209(f) states in pertinent part “that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation.” Tenn. Code Ann. § 65-5-209(f) (Supp. 2003) (*emphasis added*). Accordingly, while price regulation is designed to give the price-regulated company more flexibility with regard to adjustment of its rates, “that flexibility is limited with regard to basic services”. *United Telephone-Southeast, Inc.*, 2001 WL 266051 at \*1 (*citing* Tenn. Code Ann. § 65-5-209(f)). The Court of Appeals “interpret[s] the limitations on rate increases for basic services as fulfilling the goal of maintaining affordable rates for residential essential services . . . [and is] of the opinion that the General Assembly’s placing of stricter limitations on rate increases for basic services was . . . intended to ensure that the average customer could obtain telephone service at reasonable rates.” *Id.* at \*3, \*5.

Accordingly, the General Assembly’s enactment of the Telecommunication Reform Act of 1995 created price regulation as a means of regulating telephone rates in lieu of traditional forms of rate regulation. Once an incumbent company’s price regulation plan is approved, the slate is wiped clean and the company starts afresh under this alternative form of rate regulation. In order to ensure the State’s goal of maintaining just, reasonable, and affordable telephone rates under price regulation, the General Assembly was careful to spell out in section 209 the specific procedures that must be applied when setting the initial rates of an incumbent’s price regulation plan (*see* subsection (c)) and when considering subsequent rate adjustments under that plan (*see* subsections (e)-(g)).

The TRA must conform its actions to its enabling legislation and has no authority or power except that found in statutes. *See BellSouth Telecomm.*, 972 S.W.2d at 680. Because Tenn. Code

Ann. § 65-5-209 is the controlling statutory authority for setting and changing rates under price regulation, the TRA would exceed its authority under section 209 if it approved any change in the rates of a price-regulated company that conflicts with the plain language this statute or the company's price regulation plan adopted pursuant to this statute. *See Id.*

**B. BellSouth's Proposed Changes in the Rates Existing on June 6, 1995 for Basic Telephone Service Must Comply with Tenn. Code Ann. § 65-5-209 and BellSouth's Price Regulation Plan.**

On December 9, 1998, the TRA entered its *Order Approving BellSouth Telecommunication, Inc.'s Application for Price Regulation Plan* ("Order"). Consistent with Tenn. Code Ann. § 65-5-209, the TRA approved BellSouth's application for a price regulation plan "with the rates existing on June 6, 1995" as the initial rates for BellSouth's price regulation plan. *Order* at 21. The TRA also ordered that "[i]ncreases in BellSouth's initial rates for Basic Local Exchange Telephone Service shall not occur until December 1, 2002, consistent with Tenn. Code Ann. § 65-5-209(f) . . . [and] [a]nnual adjustments to BellSouth's basic and nonbasic rates pursuant to Tenn. Code Ann. § 65-5-209(e) shall be calculated from December 1, 1998, and that calculation of the Service Price Index for basic and nonbasic services shall be based upon service volumes for the month of December for the year of the annual filing and upon service prices in effect on December 1, 1998 . . . ." *Id.*

As a price-regulated company, any change in BellSouth's rates is governed by Tenn. Code Ann. § 65-5-209 and the price regulation plan approved by the TRA in its *Order*. Consistent with the four-year price freeze on basic rates established in Tenn. Code Ann. § 65-5-209(f), increases in the rates for basic business and residential local exchange telephone service were not permitted until December 1, 2002. *See Order* at 21. Since this four-year price freeze has expired, BellSouth currently may adjust its rates for basic business and residential local exchange telephone service as

long as such changes comply with Tenn. Code Ann. §§ 65-5-209(e) and 65-5-209(f) and BellSouth's price regulation plan.

BellSouth's instant tariff proposal is the first instance since expiration of the price freeze on basic local telephone service that BellSouth has sought to increase such rates. Therefore, the initial basic telephone rates approved for BellSouth's price regulation plan are still in effect (i.e., the rates existing on June 6, 1995). In this docket, the TRA must determine whether the tariff's proposed changes in the rates for basic local telephone service are consistent with Tenn. Code Ann. § 65-5-209 and BellSouth's price regulation plan.

**C. BellSouth's Proposed Changes in the Rates for Residential Basic Local Exchange Telephone Service Do Not Comply with Tenn. Code Ann. § 65-5-209(f).**

Tenn. Code Ann. § 65-5-209(f) plainly and unequivocally states "that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation." Tenn. Code Ann. § 65-5-209(f) (Supp. 2003) (*emphasis added*).

BellSouth's tariff is such an event where the rate for residential basic local exchange telephone service will be increased in any one year by more the percentage change in inflation using the GDP-PI from the preceding year as a measure of inflation. As demonstrated in the **EXHIBIT** attached to the Consumer Advocate's *Complaint and Petition to Intervene* filed on December 8th, many rates for residential basic local exchange telephone service will increase in the range of 4.1% to 21.7% if BellSouth's tariff proposal is approved. At most, the GDP-PI for the most recent preceding year is 1.7%. Accordingly, BellSouth's proposed changes in its rates for residential basic local exchange telephone service exceed the percentage change in inflation in violation of Tenn.

Code Ann. § 65-5-209(f). These illegal rate increases are contrary to the General Assembly's goal of maintaining affordable rates for residential essential services by placing stricter limitations on rate increases for basic services in order to ensure that the average customer can obtain telephone service at reasonable rates.

**D. BellSouth's Proposed Changes in the Rates for Basic Local Exchange Telephone Service Could Violate Tenn. Code Ann. § 65-5-209(e) and BellSouth's Price Regulation Plan.**

BellSouth's tariff could also violate Tenn. Code Ann. § 65-5-209(e), which provides that the aggregate revenues generated by any proposed changes in basic and nonbasic telephone rates must not exceed the maximum rates permitted by BellSouth's price regulation plan. The Consumer Advocate is without sufficient factual information to determine whether and by how much the revenues generated by BellSouth's proposed tariff may exceed the maximum rates allowable under its price regulation plan. However, considering that the proposed tariff seeks to implement rates for both business and residential basic local exchange telephone service that far exceed the inflationary adjustments permitted under Tenn. Code Ann. § 65-5-209(e), there is a serious question about whether the proposed tariff fits within BellSouth's price regulation plan.


**III. CONCLUSION**

Based on the foregoing, the Consumer Advocate submits that BellSouth's tariff proposal violates state law and, therefore, should not be approved. Prior to taking any action approving BellSouth's proposed tariff, the TRA should convene a contested case proceeding and grant the Consumer Advocate's *Complaint and Petition to Intervene* so that the consumers of Tennessee may effectively challenge the validity of the proposed increases in their rates for basic local exchange telephone service.



RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285  
Attorney General  
State of Tennessee

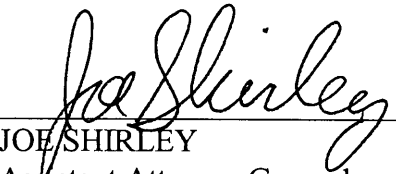
  
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(615) 532-2590

Dated: December 12, 2003

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via facsimile or first-class U.S. Mail, postage prepaid, on December 12, 2003, upon:

Guy M. Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, Tennessee 37201-3300

  
\_\_\_\_\_  
JOE SHIRLEY  
Assistant Attorney General

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